

Message

From: Torres, Ramon [Torres.Ramon@epa.gov]
Sent: 9/29/2021 2:22:11 PM
To: Chaffins, Randall [Chaffins.Randall@epa.gov]; Adams, Glenn [Adams.Glenn@epa.gov]; Amoroso, Cathy [Amoroso.Cathy@epa.gov]
Subject: FW: FYI

FYI

From: Blevins, John <Blevins.John@epa.gov>
Sent: Wednesday, September 29, 2021 9:25 AM
To: Monell, Carol <Monell.Carol@epa.gov>; Palmer, Leif <Palmer.Leif@epa.gov>; Torres, Ramon <Torres.Ramon@epa.gov>
Subject: FYI

GOP Lawmakers Question EPA Review, Delay Of Nuclear Cleanup Policy

September 28, 2021

Republican lawmakers from Tennessee are criticizing EPA's ongoing review of a precedent-setting Trump-era decision that technology-based effluent limits for radionuclides are not enforceable at a Superfund cleanup, potentially undercutting stances adopted by state and regional EPA officials.

In separate letters to EPA Administrator Michael Regan and Energy Secretary Jennifer Granholm last week, the three lawmakers -- Sens. Marsha Blackburn (R-TN) and Bill Hagerty (R-TN) and Rep. Chuck Fleischmann (R-TN) -- question the Biden EPA's decision in June to reconsider the issue while also urging officials to speed its review to avoid delaying any cleanup at the Energy Department's Oak Ridge Reservation (ORR).

The lawmakers are pushing EPA to quickly approve a final cleanup decision, or record of decision (ROD), for a landfill, known as the Environmental Management Disposal Facility (EMDF), that is at the center of the dispute.

The EMDF is expected to be built to aid in holding waste from the site after the original landfill hits capacity.

In their [Sept. 22 letter](#) to Regan, the lawmakers call for a quick approval of the ROD for the EMDF and warn of "the consequences of a failure to approve the ROD within the required timeframe."

They argue meeting that schedule is "critical to avoiding devastating setbacks for the cleanup mission."

And in [a similar letter to Granholm](#), the lawmakers also underscore their concerns over EPA's actions, fearing adverse impacts to the timeline for making the EMDF operational.

At issue is then-Administrator Andrew Wheeler's [2020 decision](#) to overrule a Region 4 determination that strict, technology-based effluent limits for discharges of radionuclide-containing wastewater should apply as enforceable applicable or relevant and appropriate requirements (ARARs) at ORR, a Superfund site.

That prompted the Southern Environmental Law Center (SELCL) and other environmental groups to urge Regan to "review, reconsider and reverse" Wheeler's decision, with environmentalists fearing Wheeler's decision, if allowed to stand, could result in "cut[ting] corners" on important cleanups.

Environmentalists have warned that Wheeler's decision to not require strict, technology based effluent limits as enforceable ARARs could open the door to other liable parties attempting to use it to evade technology-based mandates at sites regulated under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA).

Environmentalists say EPA should revise Wheeler's decision and require DOE to comply with technology-based effluent limitations as well as Tennessee's antidegradation policy.

Acting EPA enforcement chief Lawrence Starfield agreed to environmentalists' requests for a review of the decision in [a June 9 letter](#), citing in part President Joe Biden's executive order pressing officials to address environmental justice concerns.

And EPA this summer [opposed DOE's push](#) to try to implement the Wheeler policy, rejecting as outdated and insufficient a feasibility study for managing contaminated wastewater from one of the landfills that will handle Superfund waste from the facility.

As of mid-August, EPA was still reviewing the Wheeler decision. An EPA spokesperson did not respond by press time to questions on the lawmakers' letter.

'Critical Project'

But the Tennessee lawmakers question the review. "Due to the time sensitivity on this critical project, you can understand our concern when we read the June 9, 2021, letter to special interest groups from [Starfield], stating that the EPA was undertaking several reviews pertaining to EMDF."

They question the reviews per executive orders on climate change and environmental justice, and argue a delay of the construction of the facility would divert funding toward off-site disposal, lead to job losses there, and continue the migration of contaminants into waterways.

"We fail to see how forcing our constituents to continue to live with hazardous structures leaking contaminants like mercury into our water and making DOE ship millions of cubic yards of waste across the country increasing carbon emissions is consistent with the President's executive orders," they say.

The lawmakers also attempt to shoot down Starfield's commitment to work with DOE on possible additional public comment on the cleanup. They argue time constraints should preclude that, in order to avoid a gap in disposal capability on-site, and applaud DOE's past comment period extensions.

"Years of delay and bureaucratic infighting have pushed this project to a worrying precipice, despite commitments made by multiple administrations to Congress and the citizens of East Tennessee," they write in letters to both Regan and Granholm. They ask EPA, Tennessee Department of Environment and Conservation (TDEC) and DOE to "resolve any outstanding issues and expeditiously approve the final ROD."

But SELC is taking issue with the lawmakers' stance, disputing their portrayal of the situation. Amanda Garcia, an attorney with SELC, contends "EPA should be guided by the science and the law, not political bullying."

She says SELC has repeatedly pointed out in writing since 2018 that DOE's proposed plan omitted key information preventing the public and regulators from determining if the plan "will actually clean up DOE's mess or will just allow DOE to dump pollutants into our clean water in Bear Creek." CERCLA requires information tied to the effectiveness of a proposed remedy be released to the public for comment, she says.

"We're not asking for delay, we're asking for EPA to follow the law," she says, adding that the agency "at the end of the day" has to determine that the remedy is protective.

She adds that it is "offensive to read our elected representatives describe the community groups that have asked for more public comment and review of Administrator Wheeler's decision as 'special interest groups.'" She refutes this, saying, rather, they are people who live and work in or near Oak Ridge, in particular one long-standing group that has sought protection of the environment on the ORR for the community's benefit. These people "will have to live with the results of the Superfund clean-up for decades to come," she says.

As it did when Wheeler issued its decision, TDEC is once again issuing a statement that conveys a neutral stance, saying onsite disposal can occur with environmental protections in place.

"TDEC has invested significant resources into making progress on the [ORR] environmental cleanup," a spokesperson says in a statement to *Inside EPA*. "We have looked at the law, science, and facts surrounding the appropriate mix of onsite and offsite disposal and agree that with the right environmental protection measures in place, onsite disposal can be appropriately accomplished." The spokesperson adds that the department will continue to closely work with DOE and EPA to ensure proper waste disposal in line with CERCLA requirements.

That neutral position may also stem from the fact that the state and Region 4 were not entirely rebuffed by Wheeler on their cleanup positions, with Wheeler backing the application of water quality-based limits as cleanup standards for the landfill, which will discharge wastewater containing radionuclides. -- *Suzanne Yohannan*

John Blevins
Acting Region 4 Regional Administrator
US EPA Region 4
980 College Station Road
Athens GA 30605

214-437-9810 cell
706-355-8549 office
404-562-8231 (Atlanta Office number)

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